

this case, i.e. the pending appeal . . . concerning O'Neill Contention III E-3 [sic]."²

Intervenors, Christa-Maria, Bier and Mills, object to the applicant's action, asserting that the deposition is incomplete and not part of the record. They state that "[i]f Licensee wishes to utilize this deposition . . . the appropriate procedure is to reopen the record before the Licensing Board, not to make unauthorized filings with the Appeal Board."³ Finally, because intervenors claim that the applicant's action "has prejudiced this appeal," they move to have the case remanded so that the Licensing Board may entertain a motion by the applicant to reopen the record.⁴ Intervenor, John O'Neill, II, supports the motion of Christa-Maria, et al. The NRC staff takes the position that, while "it was not inappropriate for the Licensee to have submitted the subject deposition to the Appeal Board, . . . it would be inappropriate for this Board to consider the deposition in a substantive determination of this appeal" ⁵

² Id. at 1-2.

³ Letter from intervenors' counsel to Appeal Board (February 24, 1983) at 2.

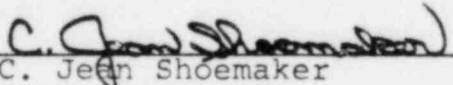
⁴ Id.

⁵ Letter from NRC staff counsel to Appeal Board (March 10, 1983) at 1.

The intervenors' motion to remand the case is denied. Applicant's submittal to us, by its terms, does not seek reopening of the record or even purport to constitute "new evidence."⁶ It is for general information purposes only and is not part of the evidentiary record that we can properly consider in deciding applicant's appeal. Accordingly, that document will play no part in our determination of the issue before us. Moreover, we assure the intervenors that the lodging of the deposition by the applicant has not, in any way, prejudiced the appeal.

It is so ORDERED.

FOR THE APPEAL BOARD


 C. Jean Shoemaker
 Secretary to the
 Appeal Board

⁶We note, however, that contrary to intervenors' apparent belief, if applicant had filed a motion to reopen, "jurisdiction to rule on [such] a motion . . . filed after exceptions have been taken . . . rests with the appeal board rather than the licensing board." Metropolitan Edison Co. (Three Mile Island Nuclear Station, Unit No. 1), ALAB-699, 16 NRC , (Oct. 27, 1982) (footnote omitted) (slip opinion at 5-6).